

AMENDED IN ASSEMBLY MAY 23, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2290

Introduced by Assembly Member Kehoe

February 21, 2002

An act to add ~~Section~~ *Sections 21001.2 and 21084.1.1* to the Public Resources Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2290, as amended, Kehoe. California Environmental Quality Act.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would *add a statement of legislative intent regarding the protection of wetlands to CEQA. The bill would* specify that, for the purposes of CEQA, any project that may have ~~an~~ *a substantial* adverse impact on a wetland or special aquatic site, as defined, ~~except a de minimis impact,~~ is a project that may have a significant effect on the environment. By expanding the scope of projects that may have a significant effect on the environment, thereby imposing additional duties on lead agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 21001.2 is added to the Public*
2 *Resources Code, to read:*
3 21001.2. *The Legislature further finds and declares the*
4 *following:*
5 (a) *Wetlands are among the most diverse, productive, and*
6 *valuable ecosystems in California. Wetlands provide irreplaceable*
7 *habitat for fish, waterfowl, and other aquatic species, including*
8 *dozens of rare and endangered species and many species*
9 *important to the human food supply. Wetlands are also important*
10 *to the public's health and welfare in that they protect water quality,*
11 *reduce flood damage, recharge groundwater reservoirs, and*
12 *control erosion of critical agricultural and recreational lands.*
13 *Reliable estimates indicate that California has lost over 90 percent*
14 *of its original wetlands habitat, exceeding the losses of any other*
15 *state.*
16 (b) *As a result of the United States Supreme Court holding in*
17 *Solid Waste Agency of Northern Cook County v. United States*
18 *Corps of Engineers, et al. (2001) 531 U.S. 159, which is also*
19 *known as the "SWANCC decision," the U.S. Corps of Engineers*
20 *may no longer use the Migratory Bird Rule as the sole basis for*
21 *asserting jurisdiction over intrastate, isolated wetlands under*
22 *Section 404 of the Clean Water Act (42 U.S.C. Sec. 1344). The*
23 *California Research Bureau, in a report entitled "the U.S.*
24 *Supreme Court Limits Federal Regulation of Wetlands:*



1 *Implications of the SWANCC decision” (February 2002),*
2 *concluded that vernal pools and swales, ephemeral or intermittent*
3 *streams and rivers, desert washes, small lakes, terminal basins,*
4 *and snowmelt ponds are the California wetlands most likely to be*
5 *affected by this decision.*

6 (c) *The California Research Bureau has found that, with*
7 *limited exceptions, California has relied on the Clean Water Act*
8 *adopted in 1972 and the Corps of Engineers to regulate impacts*
9 *and protect wetlands in the state and that there is no*
10 *comprehensive state program to regulate wetlands in California.*
11 *Therefore, potentially many California wetlands will likely not be*
12 *protected due to the SWANCC decision and California will remain*
13 *hostage to the vagaries of the federal government in conserving*
14 *critical wetland resources.*

15 (d) *Soon after adoption of the Clean Water Act, the federal*
16 *government recognized that a broad jurisdiction for the U.S. Corps*
17 *of Engineers regulatory authority was needed to fully protect*
18 *wetlands and other waters important to the nation. In 1988, the*
19 *National Wetlands Policy Forum adopted a policy goal of “no net*
20 *loss” of wetlands, which was endorsed by President Bush and*
21 *officially adopted by the Clinton administration. Recent court and*
22 *federal administrative decisions, however, seem to limit this*
23 *historical federal commitment to wetlands conservation.*

24 (e) *As early as 1976, the Legislature recognized the urgency to*
25 *protect the state’s wetlands when it adopted the Keene-Nejedly*
26 *California Wetlands Preservation Act (Chapter 7 (commencing*
27 *with Section 5810) of Division 5) which, among other things,*
28 *declares a need “for an affirmative and sustained public policy*
29 *and program directed at their preservation, restoration, and*
30 *enhancement” (subd. (a), Sec. 5811). In 1993, Governor Wilson*
31 *issued the California Wetlands Conservation Policy that included*
32 *the adoption of a no net loss of wetlands goal.*

33 (f) *The Legislature and the people of the state have frequently*
34 *expressed support for wetlands conservation, protection, and*
35 *restoration through adoption of programs facilitating wetlands*
36 *mitigation banking, completion of wetlands inventories and*
37 *wetlands conservation strategies, establishing inland wetland and*
38 *riparian habitat conservation programs within the Wildlife*
39 *Conservation Board, and the approval of numerous bond measures*
40 *that provide funds for acquiring and restoring wetlands.*

(g) Wetlands restoration has been, and will continue to be, an important contribution in the state's efforts to conserve wetlands and protect the significant wetland values critical to wildlife diversity and public health and welfare. The state's environmental agencies reported in 1998 that more than 15,000 acres of wetlands were restored, enhanced, or created in California during 1996 and 1997.

(h) The United States Supreme Court, in the SWANCC decision, excluded certain wetlands and other waters from the Army Corp of Engineer's jurisdiction based on its interpretation of the laws, rather than the ecological value of the wetlands in question. In so doing, the court indicated that it was the responsibility of the states to regulate isolated wetlands. It is the intent of the Legislature, consistent with the policies of the state, to develop a statewide comprehensive program to protect, conserve, and restore California's remaining wetlands in a manner that ensures that the water quality and ecological benefits of wetlands will be guaranteed for future generations.

(i) The Legislature's intent, in adding Section 21084.1.1, is to provide a framework for ensuring that impacts to wetlands and other aquatic sites of ecological value are analyzed and fully mitigated until the establishment of a comprehensive state wetlands program.

SEC. 2. Section 21084.1.1 is added to the Public Resources Code, to read:

21084.1.1. (a) ~~(1)~~—A project that may have ~~an~~ a substantial adverse impact on a wetland or special aquatic site is a project that may have a significant effect on the environment for the purposes of this division.

~~(2) For the purposes of this section, "adverse impact" does not include de minimis impact.~~

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Special aquatic site" means geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire

ecosystem of a region and include, but are not limited to, all of the following:

- ~~(A) Diked agricultural baylands.~~
- ~~(B)~~
- (A) Marshpans.
- ~~(C)~~
- (B) Mudflats.
- ~~(D)~~
- (C) Playa lakes.
- ~~(E)~~
- (D) Riffle and pool complexes.
- ~~(F) Saltponds and crystallizers, both active and abandoned.~~
- (E) *Active and abandoned saltponds.*
- ~~(G)~~
- (F) Sandflats.
- ~~(H)~~
- (G) Shellflats.
- ~~(I)~~
- (H) Vegetated shallows.

(2) “Wetland” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CORRECTIONS

Text — Pages 3,5.

O